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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95107; File No. SR-C2-2022-012]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

June 15, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2022, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (“C2” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fees schedule. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule in connection with its discount program for Bulk BOE Logical Ports, effective June 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 16% of the market share and currently the Exchange represents approximately 4% of the market share.³ Thus, in such a low-

³ See Cboe Global Markets U.S. Options Market Volume Summary by Month (May 24, 2022), available at https://markets.cboe.com/us/options/market_statistics/.

concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange currently offers BOE Bulk Logical Ports ("BOE Bulk Ports"), which provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. Bulk BOE Ports are assessed \$1,500 per port, per month for the first five Bulk BOE Ports and thereafter assessed \$2,500 per port, per month for each additional Bulk BOE Port. Each Bulk BOE Port also incurs the logical port fee indicated in the table above when used to enter up to 30,000,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 30,000,000 orders per day per Bulk BOE Port will incur an additional logical port fee of \$2,500 per month ("incremental usage fees"). The Exchange also offers a discount program for Bulk BOE Ports which provides an opportunity for Market-Makers to obtain credits on their monthly Bulk BOE Port fees (excluding incremental usage fees).⁴ Currently, under the Bulk BOE Ports discount program,

⁴ While BOE Bulk Ports are available to all market participants, they are used primarily by Market Makers or firms that conduct similar business activity.

Market-Makers will receive a 30% discount on its monthly Bulk BOE Port fees (excluding incremental usage fees) where a Market-Maker has (1) a Step-Up ADAV⁵ equal to or greater than 0.025% of average OCV⁶ from February 2021 and (2) a “Make Rate” equal to or greater than 85%.⁷

The Exchange proposes to amend the current criteria under the Bulk BOE Port discount program and add another tier of criteria the discount program. The proposed rule change amends the current criteria in prong one by slightly increasing the Step-Up ADAV over the average OCV from 0.025% to 0.03%, changing the base “step-up” month from February 2021 to June 2021, and increasing the percentage of “Make Rate” from 85% to 97%. The 30% discount remains the same. The proposed rule change also adopts a new tier of criteria under the Bulk BOE Port discount program, which provides that a Market-Maker will receive a 40% discount on its monthly Bulk BOE Logical Port

⁵ “ADAV” means average daily added volume calculated as the number of contracts added per day. ADAV is calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours (“Exchange System Disruption”) and on any day with a scheduled early market close.

⁶ “OCV” (or “OCC Customer Volume” means, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (“OCC”) for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

⁷ The “Make Rate” shall be derived from a Market-Maker’s volume the previous month in all symbols using the following formula: (i) the Market-Maker’s total simple add volume divided by (ii) the Market-Maker’s total simple volume. Trades on the open and complex orders will be excluded from the Make Rate calculation. The Exchange will aggregate the trading activity of separate Market-Maker firms for purposes of the discount tier and make rate calculation if there is at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A.

fees, excluding incremental usage fees, where the Market-Maker (1) has a Step-Up ADAV equal to or greater than 0.05% of OCV from June 2021 and (2) has a “Make Rate” equal to or greater than 97%.

The proposed Bulk BOE Port discount program, currently and as amended, is designed to attract liquidity from traditional Market-Makers and encourage Market-Makers to grow their volume. The discount program mitigates costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). The proposed increase in percentage of ADAV over OCV (0.03%) to receive the current 30% discount on monthly Bulk BOE Port fees in the existing tier and proposed new tier offering a 40% discount for reaching an even higher percentage of ADAV over OCV (0.05%) will encourage Market Makers to strive to provide increased levels of liquidity. The proposed increase in the percentage of “Make Rate” to 97%, and addition of the same “Make Rate” prong of criteria in the proposed new tier, is intended to encourage Market Makers with significant Make Rates to continue to participate on the Exchange and add liquidity, or otherwise increase their Make Rates by streaming more quotes. Increased liquidity and enhanced quote streaming from Market Makers generally provide greater trading opportunities and tighter spreads, which tends to signal additional corresponding increase in order flow from other market participants. This, in turn, benefits all investors by deepening the Exchange’s liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Trading Permit Holders and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change to amend the Bulk BOE Ports discount program is reasonable, equitable and not unfairly discriminatory. The proposed rule changes to increase the percentage of ADAV over OCV (0.03%) to receive the current 30% discount on monthly Bulk BOE Port fees in the existing tier and to adopt a new tier offering a 40% discount for reaching an even higher percentage of ADAV over OCV (0.05%) are reasonably designed to encourage Market Makers to strive to provide

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f.(b)(5).

increased levels of liquidity. Similarly, the proposed rule changes to increase the percentage of “Make Rate” to 97% and to add the same “Make Rate” prong of criteria in the proposed new tier are reasonably designed to encourage Market Makers with significant Make Rates to continue to participate on the Exchange and add liquidity, or otherwise increase their Make Rates by streaming more quotes. As described above, increased liquidity and enhanced quote streaming from Market Makers generally provide greater trading opportunities and tighter spreads, signaling an additional corresponding increase in order flow from other market participants. This potentially deepens the Exchange’s liquidity pool, provides increased execution incentives and opportunities, offers additional flexibility for all investors to enjoy cost savings, supports the quality of price discovery, promotes market transparency and improves investor protection. The Exchange believes the proposed discount of 40% included in the proposed new tier is reasonable in that it is an incremental increase over the discount rate of 30% offered in the existing tier, which is reasonably commensurate with the incremental increase in percentage of ADAV over OCV that a Market Maker must achieve to receive the proposed 40% discount as compared to the percentage of ADAV over OCV that a Market Maker must achieve to receive the existing 30% discount. The Exchange notes that the proposed discount under the proposed new tier is in line with the discount offered to Market Makers on its affiliate exchange, Cboe Exchange, Inc. (“Cboe Options”).¹¹ Additionally, the Exchange believes it is reasonable to update the baseline month to a month that is closer in time, therefore a more relevant measure for “step-up” volume.

¹¹ See Cboe Options Fees Schedule, Market-Maker Access Credit.

The proposed rule change to amend the Bulk BOE Port discount program, which is offered only to Market Makers, is equitable and not unfairly discriminatory because Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have. The Exchange also believes that the discount program, currently and as amended, provides an incentive for Market Makers to provide more liquidity to the Exchange. Generally, greater liquidity benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to provide credits to those Market Makers that primarily provide and post liquidity to the Exchange, as the Exchange wants to continue to encourage Market Makers with significant Make Rates to continue to participate on the Exchange and add liquidity. Moreover, the Exchange notes that Market Makers with high Make Rate percentages generally require higher amounts of capacity than other Market Makers. Particularly, Market Makers with high Make Rates are generally streaming significantly more quotes than those with lower Make Rates. As such, Market Makers with high Make Rates may incur more costs than other Market Makers as they may need to purchase multiple Bulk BOE Ports in order to accommodate their capacity needs. The Exchange believes the proposed credits for Bulk BOE Ports encourages Market Makers to continue to provide liquidity for the Exchange, notwithstanding the costs incurred by purchasing multiple ports. Particularly, the discount program, currently and as proposed, is intended to mitigate the costs incurred by traditional Market Makers that focus on adding liquidity to

the Exchange (as opposed to those that provide and take, or just take). Additionally, while the Exchange has no way of predicting with certainty how many and which Market Makers will satisfy the proposed criteria to receive the discount, the Exchange anticipates at least two Market Makers will satisfy the criteria across the two tiers to receive the applicable discounts. The Exchange does not believe the proposed discount will adversely impact any Market Maker's pricing. Rather, should a Market Maker not meet the proposed criteria, the Market Maker will merely not receive the proposed discount.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to amend the Bulk BOE Port discount program offered to Market Makers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. As described above, Market Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have. The Exchange does not believe the proposed rule change does will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Trading Permit Holders have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the

Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share. Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-C2-2022-012 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2022-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2022-012 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁴ 17 CFR 200.30-3(a)(12).